

§ 516.26

(c) *Actions at HQDA.* Upon receipt of the DA Form 4 with documents attached thereto, HQDA will affix a ribbon and seal and deliver it to the Office of the Administrative Assistant to the Secretary of the Army. That office will place the official Army seal on the packet.

§ 516.26 Unsworn declarations under penalty of perjury.

(a) General. Under the provisions of 28 U.S.C. 1746, whenever any matter is required or permitted to be established or proven by a sworn statement, oath or affidavit, such matter may also be established or proven by an unsworn written declaration under penalty of perjury. Because such declaration does not require a notary or other official to administer oaths, individuals preparing statements for use in litigation should consider using this format. (See figure C-3, appendix G, of this part).

(b) When executed within the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on _____

(Date) (Signature)

(c) When executed outside the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on _____

(Date) (Signature)

Subpart D—Individual Liability

§ 516.27 Scope.

This subpart guidance when DA personnel, as a result of the performance of their official duties, are either sued in their personal capacity, or are charged in a criminal proceeding. Examples of civil actions alleging individual liability include the following: a medical malpractice lawsuit against health care providers; suits resulting from motor vehicle accidents; constitutional torts; or, common law torts such as assault, libel, or intentional infliction of emotional distress. Likewise,

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state or Federal criminal charges can arise from the performance of official duties, including environmental crimes or motor vehicle accidents.

§ 516.28 Policy.

(a) General. Commanders, supervisors, and SJAs or legal advisers will give highest priority to compliance with the requirements of this chapter with regard to current or former DA personnel who face criminal charges or civil litigation in their individual capacity as a result of performance of their official duties.

(b) DOJ policy on representation. If in the best interest of the United States, upon request of the individual concerned, and upon certification by his agency that he was acting within the scope of his employment, DOJ may represent present and former DA personnel sued individually as a result of actions taken within the scope of their employment. Representation can be declined for a variety of reasons, including but not limited to the following: the employee was not acting within the scope of his office; there is a conflict of interest; or, actions were not taken in a good faith effort to conform to law.

§ 516.29 Federal statutes and regulations.

(a) Federal Tort Claims Act (FTCA). (28 U.S.C. 1346(b), 2671–2680). A waiver of sovereign immunity which, with certain exceptions, makes the United States liable for tort claims in the same manner as a private individual.

(b) Federal Employees Liability Reform and Tort Compensation Act of 1988 (FELRTCA or the Westfall Act, Pub. L. No. 100–694, 102 Stat. 4563 (1988) (codified at and amending 28 U.S.C. 2671, 2674, 2679). FELRTCA, by amending the Federal Tort Claims Act, makes the FTCA the exclusive remedy for common law tort claims arising from actions taken by Federal employees acting within the scope of employment. The law was passed to eliminate problems caused by *Westfall v. Erwin*, 484 U.S. 292 (1988).

(c) 10 U.S.C. 1089 (Defense of certain suits arising out of medical malpractice). This provision, commonly referred to as the Gonzales Act, makes the FTCA the exclusive remedy for